



Eric Milstead  
Director

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators PATRICK, Agenbroad, Ward-Engelking and,  
Representatives HOLTZCLAW, Anderson, Chew

**FROM:** Matt Drake - Legislative Drafting Attorney

**DATE:** March 06, 2019

**SUBJECT:** Temporary Rule

IDAPA 09.01.30 - Unemployment Insurance Benefits Administration Rules - Adoption of Temporary Rule - Docket No. 09-0130-1901

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Matt Drake at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

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**IDAPA 09 – IDAHO DEPARTMENT OF LABOR**  
**09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES**  
**DOCKET NO. 09-0130-1901**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is March 6, 2019.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule, authorized pursuant to Section 72-1333(2), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The Idaho Department of Labor (Department) would like to assure its meeting federal conformity requirements so workers receiving training outside of their local labor market are treated the same as those receiving training locally. This temporary rule allows the Department time to create a final rule and / or a statutory change for the 2020 Legislative Session that, with the director's approval, allows unemployment insurance claimants to attend training out of the area under specific circumstances.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1), Idaho Code, the Governor has found the temporary adoption of the rule is appropriate for the following reasons:

Compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Joshua McKenna at (208) 332 3577 x3919.

Dated this 8th day of February, 2019.

Joshua McKenna  
UI Benefits Bureau Chief  
Idaho Department of Labor  
Unemployment Insurance Division  
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Boise, ID 83735  
Phone: (208) 332 3577 x3919  
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 09-0130-1901**  
**(Only Those Sections With Amendments Are Shown.)**

**This rule has been adopted as a temporary rule and is effective March 6, 2019.**

**175. AVAILABLE FOR WORK.**

The phrase “available for work” is defined as a state of mind which involves a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one’s services in the claimant’s area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

**01. Alternate Permanent Work.** A claimant laid off from regular employment for a short period and who expects to be called back at any moment does not need to be available for alternate permanent work to be eligible for benefits. (3-19-99)

**02. Availability Requirements.** The type of work for which the claimant is available must exist in the claimant’s area to the extent that a normal unemployed person would generally find work within a reasonable period of time. (3-19-99)

**03. Child Care.** Child care must be arranged so as not to restrict a claimant’s availability for work or for seeking work. (3-19-99)

**04. Compelling Personal Circumstances.** A claimant must be available for the whole of the workweek for which he claims benefits except if he is unavailable due to compelling personal circumstances, his unavailability does not exceed a minor portion of his workweek, and during which time he does not refuse or miss suitable work that would have provided wages greater than one half (1/2) of his weekly benefit amount. For the purposes of this rule, compelling personal circumstances are defined as: (4-11-06)

- a.** A situation in which the claimant required the assistance of emergency response personnel; (4-11-06)
- b.** The serious illness or death or funeral of an immediate family member; or (4-11-06)
- c.** The wedding of the claimant or an immediate family member. (4-11-06)
- d.** For the purposes of this rule, “immediate family member” is defined as a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. (4-11-06)

**05. Conscientious Objection.** No person shall be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. (3-19-99)

**06. Contract Obligation.** A person who is bound by a contract which prevents him from accepting other employment shall not be eligible for benefits. (3-19-99)

**07. Distance to Work.** A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. (3-19-99)

**08. Domestic Circumstances.** A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant’s availability for work or for seeking work. (3-19-99)

**09. Equipment.** Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant’s availability for work, unless he will

accept other work. (3-19-99)

**10. Evidence.** A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules. (3-19-99)

**11. Experience or Training.** A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. (3-19-99)

**12. Full-Time/Part-Time Work.** To be eligible for benefits, a claimant must be available for a full workweek and a full, normal workday unless the claimant establishes that a majority of the weeks worked in his base period were for less than full-time work or the claimant establishes eligibility under the Americans with Disabilities Act. An individual who restricts his availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, will be considered fully employed and ineligible to receive benefits if the individual works hours comparable to his part-time work experience in his base period. (3-29-10)

**13. Incarceration/Work Release.** A claimant who is incarcerated for any part of the claimant's normal workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment. (3-19-99)

**14. Jury Duty/Subpoenas.** A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period. A claimant is not ineligible if he must refuse work because of the jury duty or subpoena. (3-19-99)

**15. Licensing or Government Restrictions.** A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. (3-19-99)

**16. Moving to Remote Area.** A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. (3-19-99)

**17. Prospects for Work.** A claimant who is unemployed for a long period of time is expected to lower his expectations for employment and become available for work which may not have been previously considered suitable. (3-19-99)

**18. Public Official.** A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1). (3-19-99)

**19. Public Service.** Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. (3-19-99)

**20. Questionable Availability.** A claimant must be notified of his questionable availability status and given an opportunity to provide proof of his availability before a determination is made on the issue. (3-19-99)

**21. Restricting Work to Within the Home.** A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. (3-19-99)

**22. School Attendance or a Training Course.** A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment if there is a conflict between employment and the schooling or training. (3-19-99)

**23. Temporary Absence from Local Labor Market to Seek Work.** All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market; provided, however, claimants otherwise eligible to receive benefits while

participating in an approved training program or course shall not be deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market. ~~(3-19-99)~~(3-6-19)T

- 24. Time.** (3-19-99)
- a.** Time Restrictions. A claimant shall not impose restrictions on his time, including either hours of the day or days of the week, which will limit his availability to seek or accept suitable work. (3-19-99)
- b.** Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed. (3-19-99)
- 25. Transportation Difficulties.** Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. (3-19-99)
- 26. Unreasonable Restrictions on Working Conditions.** A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. (3-19-99)
- 27. Vacation.** A person on a vacation approved by his employer during time when work is available is not considered available for work nor eligible for benefits. (3-19-99)
- 28. Wages.** A claimant shall not be ineligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. (3-19-99)
- a.** Demanding Higher Wages. A claimant shall be ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. (3-19-99)
- b.** Prior Earnings. The claimant's prior earnings and past experience shall be considered in determining whether he is available for suitable work. (3-19-99)
- 29. Waiver of One-Year Training Limitation.** For purposes of approving a waiver of the one (1) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met: (3-19-99)
- a.** Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. (3-19-99)
- b.** Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. (3-19-99)
- c.** Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. (3-19-99)
- d.** Denial. No claimant shall be denied a waiver of the one (1) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. (3-19-99)